IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

**O R D E R**

S.B.CRIMINAL MISC. PETITION NO. 1164/2005
(Jagdish Chandra Vs. State of Rajasthan & Anr.)

Date of Order : 16/10/2006

**PRESENT**

**HON'BLE MR. JUSTICE H.R.PANWAR**

Mr. S.D.Goswami for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.

**BY THE COURT**:-

The notice of non-petitioner No.2 has been served on her father. The service is therefore, complete in view of the averment made in the notice itself by the father of non-petitioner No.2.

Heard learned counsel for the petitioner and public prosecutor. No one appears for the non-petitioner No.2 despite service.

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 12.8.2005 passed by Additional Chief Judicial Magistrate, Bhadra, Hanumangarh (for short 'the trial court' hereinafter), whereby on an application filed by non-petitioner No.2 under Section 125 (3) Cr.P.C., the

trial court directed to send the petitioner to jail on his failure to pay the monthly allowance of maintenance granted in favour of non-petitioner No.2 and minor daughter of the petitioner by order dated 16.10.2003 in Criminal Case No.149/02.

Learned counsel for the petitioner submits that custody of minor daughter Monika has been given to the present petitioner by order of Civil Judge (Senior Division) Fatehabad on 13.6.2005 in a petition filed by the petitioner against the non-petitioner for appointment/ declaration of guardian of minor Sudesh Kaur daughter of the present petitioner.

From the order dated 13.6.2005 passed by Civil Judge (Senior Division) Fatehabad, it is clear that non-petitioner voluntarily handed over the custody of minor daughter Sudesh Kaur to the present petitioner and therefore, from the date of taking custody of the minor, the petitioner is not under legal liability to pay maintenance to the non-petitioner No.2 in respect of minor daughter Sudesh Kaur.

Learned counsel for the petitioner further submits that on 6.12.2005, the non-petitioner No.2 contacted re-marriage and therefore, she is not entitled for the maintenance. This question has to be decided by the trial court.

Learned counsel submits that the petitioner has already filed an application before the trial court. In view of the statement of counsel for the petitioner, let the trial court decide

the application filed by the petitioner in this respect in accordance with law.

The criminal misc. petition is accordingly disposed of. Stay petition also stands disposed of.

**(H.R.PANWAR),J.**

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